**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 828 OF 2006**
**IN**
**NOTICE OF MOTION NO. 3625 OF 2006**
**IN**
**SUIT NO. 2994 OF 2006**

Poonam Lachmandas Jaisinghani ] .. Appellant (Ori.Plaintiff)

Versus

1. Indra Shamdas Malkani and ors. ] .. Respondents (Ori.Defendants)

Mr. Arif Y. Bookwala, senior counsel with Mr. Nitin Thakkar i/b Mr. K.K. Jadhav & A.K. Jadhav for the appellant.

Mr. P.K. Samdani, senior counsel with Mr. P.N. Vora i/b M/s. Pramodkumar & Co. for respondent No.2.

**CORAM: R.M. LODHA, &**
**S.A. BOBDE, JJ.**

**DATED: 23RD NOVEMBER, 2006**

**P.C. :**

. Heard.

2. Admit.

3. Mr. P.N. Vora, Advocate waives service for respondent No.2. By consent, service on respondent No.1 and respondent No.3 is dispensed with.

4. Appeal is heard finally at this stage.

5. The senior counsel for the parties agreed that the order passed by the learned Motion Judge on 16th October, 2006, may be substituted by the following order to remain operative until the disposal of the Notice of Motion:

(i) The appellant (plaintiff) and the respondent No.2 (defendant No.2) shall share the flat as per the plan marked "X" for identification purposes. The portion shown in letter "A" shall be occupied by the respondent No.2 (defendant No.2), while the portion shown in letter "B" shall remain in possession of the appellant (plaintiff).

(ii) A wooden partition shall be erected by the respondent No.2 (defendant No.2) at the place shown in green colour which shall have two doors of 3 feet X 7 feet at the portion marked "A-1" and "A-2". The wooden partition shall be erected by the respondent No.2 (defendant No.2) right from the floor to the ceiling at his cost within two weeks from today.

(iii) Both the appellant (plaintiff) as well as the respondent No.2 (defendant No.2) shall keep one key each of the lock at the entrance door.

(iv) The stilt parking No.2 which is attached to the subject flat shall be used for six months by the appellant (plaintiff) and the other six months by the respondent No.2 (defendant No.2) in a year. For the first six months of 2007, the respondent No.2 (defendant No.2) shall use the stilt parking No.2 and for the remaining six months of 2007, the stilt parking No.2 shall be used by the appellant (plaintiff). This arrangement shall continue for subsequent years as well. For the period from today upto 31st December, 2006, the respondent No.2 (defendant No.2) is permitted to use the stilt parking No.2.

(v) The outgoings of the subject flat shall be shared equally by the appellant (plaintiff) and the respondent No.2 (defendant No.2) from the date the appellant (plaintiff) is put into possession of the

portion "B".

(vi) The respondent No.2 (defendant No.2) shall obtain separate electricity connection for the portion in his occupation. However, until then the appellant (plaintiff) as well as the respondent No.2 (defendant No.2) shall share the electricity charges equally.

(vii) The Share Certificate deposited by the respondent No.2 (defendant No.2) with the Prothonotary & Senior Master of this Court shall continue to remain with the Prothonotary & Senior Master until further orders in the Notice of Motion.

6. In case the respondent No.2 (defendant No.2) fails to erect the wooden partition within two weeks from today, the Court Receiver in respect of the subject flat shall stand appointed. He will immediately remove the respondent No.2 (defendant No.2) from the flat in question and apply to the Court for further appropriate direction.

. No costs.

Sd/-

**[R.M. LODHA, J.]**

Sd/-
**[S.A. BOBDE, J.]**